

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VIKKI D. LEWIS, individually and on behalf of
all other persons similarly situated,

Plaintiff,

-against-

ORDER

CV 06-1308 (DRH)(ARL)

NATIONAL FINANCIAL SYSTEMS, INC.,

Defendant.

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LINDSAY, Magistrate Judge:

By letter dated June 26, 2006, the parties advised the undersigned that they agreed with the court's proposed scheduling order establishing December 20, 2006, as a cut off date for all discovery. Based on the parties' representation, the court cancelled the initial conference that had been scheduled for July 12, 2006. Shortly thereafter, the defendant, National Financial Systems, Inc.'s ("NFS"), sought a protective order with respect to a subpoena for NFS' payroll records on the ground that the subpoena was improper because the class has not been conditionally certified. The court granted the application agreeing that the subpoena was improper given that the class has not been conditionally certified. The court advised that parties that once the plaintiff had sought conditional certification, the court would then consider ordering additional discovery, including the names and addresses of the potential plaintiffs to facilitate the opt-in process.

Despite the deadline for discovery and the court's prior order, it appears from the plaintiff's January 5, 2007 letter that the plaintiff decided not to go forward with non-class discovery because it apparently felt that the undersigned's approach to discovery was "duplicative." Instead, the plaintiff waited for approximately three months and, without having completed non-class discovery, submitted a motion for class certification. In addition, the plaintiff attempted to modify the scheduling order through a back door, seeking the relief from Judge Hurley as part of its motion for class certification. Now, on the eve of the pretrial conference, and having failed to timely obtain the relief directly from Judge Hurley, the plaintiff seeks an extension of the discovery schedule. That request is denied. The final conference will go forward as scheduled on January 22, 2007.

Dated: Central Islip, New York
January 8, 2007

SO ORDERED:

/s/
ARLENE R. LINDSAY
United States Magistrate Judge